

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SCOTT PHILLIP LEWIS,

Plaintiff,

-v-

8:23-CV-1647

FRANKLIN COUNTY, NY *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

SCOTT PHILLIP LEWIS

Plaintiff, Pro Se

1936 Saranac Avenue

#3, PMB 411

Lake Placid, NY 12946

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On December 28, 2023, *pro se* plaintiff Scott Phillip Lewis (“plaintiff”), a serial litigant,¹ filed this civil action alleging that defendants violated his rights under 42 U.S.C. § 1983, the Americans with Disabilities Act, and the

¹ U.S. Magistrate Judge Christian F. Hummel notes that plaintiff has filed at least 15 other actions. Dkt. No. 10 at n.1.

Rehabilitation Act. Dkt. No. 1. Along with his complaint, plaintiff moved for leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3.

On April 30, 2024, U.S. Magistrate Judge Christian F. Hummel granted plaintiff’s IFP Application, conducted an initial review of the pleading, and advised by Report & Recommendation (“R&R”) that plaintiff’s complaint be dismissed in substantial part. Dkt. No. 10.

In particular, Judge Hummel recommended that plaintiff’s (1) Fourth Amendment claim against defendant Officer Bishop be allowed to proceed; (2) various claims against defendants Justice Fisher and the Franklin County District Attorney be dismissed with prejudice; (3) federal-law claims against defendants Franklin County, NY, the Town of Malone, and the Village of Malone be dismissed without prejudice; and (4) state-law claims against defendants Officer Bishop, Franklin County, the Town of Malone, and the Village of Malone be dismissed without prejudice. Dkt. No. 10.

However, Judge Hummel did not recommend service on defendant Bishop just yet. Dkt. No. 10. Instead, Judge Hummel advised that plaintiff should be given a thirty-day window in which to file an amended complaint in the event he sought to replead any of his claims that were dismissed without prejudice. If so, the amended pleading would be returned to Judge Hummel for further review. *Id.* If plaintiff chose not to file an amended complaint,

those dismissed claims would be deemed abandoned, ordered stricken, and then Judge Hummel would then order service on defendant Bishop. *Id.*

Plaintiff has lodged objections. Dkt. No. 13. Notably, plaintiff insists that he did not intend to sue any parties other than “Franklin County, NY, the [T]own of Malone, and the Village of Malone.” *Id.* Out of an abundance of caution, the Court will adopt the R&R in full—this approach gives plaintiff an opportunity to amend his complaint to replead his desired claims (to the extent they were dismissed without prejudice) as well as an opportunity to withdraw any claims he might not have intended to pursue (such as any claims against Officer Bishop or other parties). *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 10) is ACCEPTED;
2. Plaintiff’s motion for reconsideration (Dkt. No. 9) is DENIED;
3. Plaintiff’s claims against Justice Fisher and Franklin County District Attorney are DISMISSED with prejudice;
4. Plaintiff’s federal-law claims against Franklin County, the Town of Malone, and the Village of Malone are DISMISSED without prejudice;
5. Plaintiff’s state-law claims against Officer Bishop, Franklin County, the Town of Malone, and the Village of Malone are DISMISSED without prejudice;

6. Plaintiff shall have THIRTY DAYS in which to file an amended complaint as to any of his claims dismissed without prejudice;

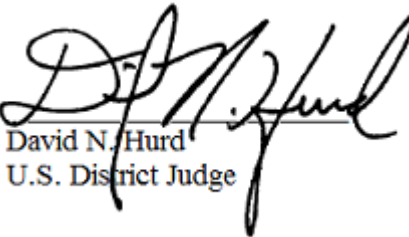
7. Any amended pleading must be a complete pleading as explained by Judge Hummel in footnote 13 of the April 30, 2024 R&R at Docket No. 10;

8. If plaintiff chooses not to file an amended complaint, the dismissed claims will be deemed abandoned, ordered stricken, and then this matter will be returned to Judge Hummel for the issuance of service; and

9. If plaintiff chooses to timely file an amended complaint, the matter will be returned to Judge Hummel for further review and any other action that might be appropriate.

IT IS SO ORDERED.

Dated: July 10, 2024
Utica, New York.



David N. Hurd
U.S. District Judge